

In the Matter of )  
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Service Quality, Customer ) WC Docket No. 08-190  
Satisfaction, Infrastructure and )  
Operating Data Gathering )

REPLY COMMENTS OF THE RURAL NEBRASKA LOCAL EXCHANGE CARRIERS  
ON THE INITIAL REGULATORY FLEXIBILITY ANALYSIS

December 15, 2008

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## SUMMARY

Great Plains Communications, Inc., Hemingford Cooperative Telephone Company, Keystone-Arthur Telephone Company, K&M Telephone Company, Inc., Nebraska Central Telephone Company and Northeast Nebraska Telephone Company (collectively, the Rural Nebraska LECs), by their attorney, hereby submit these reply comments on the Initial Regulatory Flexibility Analysis (IRFA) contained in the Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 08-203, released September 6, 2008 (Order/NPRM), in the captioned proceeding.

As demonstrated in the Comments of the Rural Nebraska LECs, the NPRM violates the Regulatory Flexibility Act by not providing all the information required in the IRFA. Other commenters similarly pointed out flaws in the IRFA. The solution is for the Commission to terminate the proceeding, or at a minimum, exempt "small ILECs and their affiliates" from any reporting requirements adopted in the proceeding.

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the NPRM violates the Regulatory Flexibility Act by not providing all the information required in the IRFA.<sup>2</sup> Other commenters similarly pointed out flaws in the IRFA. The solution is for the Commission to terminate the proceeding, or at a minimum, exempt "small ILECs and their affiliates" from any reporting requirements adopted in the proceeding. These issues are discussed below.

### **BACKGROUND**

The Rural Nebraska LECs are small ILECs serving rural areas of Nebraska. In addition to providing local exchange service, the Rural Nebraska LECs and their affiliates provide broadband service, long distance service, and in some instances, cable TV service.

Several of them serve fewer than 1000 lines. They all have fewer than 1500 employees (the size threshold for small

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<sup>2</sup> In addition to violating the Regulatory Flexibility Act, the NPRM does not comply with the Paperwork Reduction Act, and the Small Business Paperwork Relief Act of 2002. These issues are addressed in two separate reply comments filed today by the Rural Nebraska LECs. Reply Comments of the Rural Nebraska Local Exchange Carriers, WC Docket No. 08-190, FCC 08-203 (filed Dec. 15, 2008); Reply Comments of the Rural Nebraska Local Exchange Carriers on the Information Collections, WC Docket No. 08-190, FCC 08-203 (filed Dec. 15, 2008); see also Comments of the Rural Nebraska LECs on the Initial Regulatory Flexibility Analysis at 3-6.

businesses under the Regulatory Flexibility Act).<sup>3</sup> Some of the Rural Nebraska LECs have fewer than 25 employees (the size threshold for small businesses under the Small Business Paperwork Relief Act of 2002).<sup>4</sup> Their telecom affiliates are of similar size, or smaller. Indeed, the LECs typically share staff with their affiliates. Given their small size and correspondingly small staff, the Rural Nebraska LECs and their affiliates are especially impacted by any increased regulatory reporting requirements.

**I. COMMENTERS AGREE: THE IRFA DOES NOT PROVIDE THE NECESSARY INFORMATION; THE FCC SHOULD TERMINATE THE PROCEEDING**

Three parties commented specifically on the IRFA: the Rural Vermont ITCs, the Rural Nebraska LECs, and OPASTCO/WTa. All three parties agree: The IRFA does not provide all of the information required by the Regulatory Flexibility Act. The Rural Nebraska LECs and the Rural Vermont ITCs both demonstrated that the IRFA failed: (a) to explain why action by the agency is being considered, (b) to provide a succinct statement of the objectives of, and legal basis for, the proposed rule, and (c) to explain the professional skills necessary for preparation of the

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<sup>3</sup> NPRM app. C para. 5.

<sup>4</sup> Id. para. 44.

report or record.<sup>5</sup> OPASTCO/WTB similarly noted that the IRFA failed to supply the cost and burdens estimates, as required by the Regulatory Flexibility Act.<sup>6</sup>

Given the flawed IRFA, the NPRM itself is fatally flawed. The Commission cannot build an adequate Final Regulatory Flexibility Analysis (FRFA) on a deficient IRFA.<sup>7</sup> The solution is to terminate the proceeding.

**II. ALTERNATIVELY, TO MINIMIZE THE IMPACT ON SMALL ENTITIES, THE COMMISSION SHOULD EXEMPT SMALL ILECS AND THEIR AFFILIATES**

The three parties that commented specifically on the IRFA all agree that an alternative way to minimize the burdens on small ILECs is to exempt them from any reporting requirements, pursuant to the Regulatory Flexibility Act.<sup>8</sup> As explained in the Reply Comments of the Rural Nebraska LECs, filed today, any exemption should be extended to "small ILECs and their affiliates" - to be sure that the affiliates would be exempt from

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<sup>5</sup> 5 U.S.C. § 603(b)(4); Rural Vermont ITCs Comments at 3-7; Rural Nebraska LECs Comments on the Initial Regulatory Flexibility Analysis at 4-6.

<sup>6</sup> OPASTCO/WTB Comments at 5-6 (citing earlier remarks of the Office of Advocacy of the United States Small Business Administration).

<sup>7</sup> See id.

<sup>8</sup> 5 U.S.C. § 603(c)(4); Rural Nebraska LECs Comments at 8; Rural Vermont ITCs Comments at 7; OPASTCO/WTB Comments at 7.

any reporting requirements imposed on broadband or telecommunications providers. These affiliates are even smaller than the ILECs themselves, so exempting them would be consistent with the Regulatory Flexibility Act.

## CONCLUSION

In sum, the Rural Nebraska LECs, the Rural Vermont ITCs, and OPASTCO/MTA agree that the Commission has not complied with the Regulatory Flexibility Act. The Commission should terminate the proceeding. However, if the Commission chooses to continue with this proceeding, the Commission should exempt small ILECs and their affiliates from any reporting requirements adopted in this proceeding. Such action would be consistent with the Regulatory Flexibility Act.

Respectfully submitted,  
**RURAL NEBRASKA LECs**

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December 15, 2008



**CERTIFICATE OF SERVICE**

I, Susan J. Bahr, Law Offices of Susan Bahr, PC, certify that on this 15th day of December, 2008, I have sent a copy of the foregoing to the following:

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